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No. 84-698

In the Supreme Court of the United States

OCTOBER TERM, 1984

JOSEPH M. SAIZAN, PETITIONER

v.

RAYMOND J. DONOVAN,
SECRETARY OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner contends that he is entitled to relitigate a cause of action previously settled by consent judgment.

1. Petitioner is an employee of the Labor Management Services Administration (LMSA), United States Department of Labor (Pet. App. 2). In 1979, petitioner was advised that, because his performance fell below acceptable standards, he would be demoted and transferred (*id.* at 2-3). After demotion and transfer, petitioner appealed to the Merit Systems Protection Board (MSPB) (*id.* at 3). Petitioner simultaneously filed two law suits, later consolidated, against the Secretary of Labor and other federal officials in district court, alleging inter alia, that they had violated his constitutional rights during the course of his employment by subjecting him to physical and emotional duress prior to his demotion and transfer (*id.* at 4, 9). In March 1980, the

district court approved a consent judgment under which petitioner was transferred and granted a pay increase (*id.* at 8 n.5). The consent judgment dismissed with prejudice all pending administrative appeals, grievances, complaints, and Freedom of Information Act requests, and prohibited petitioner from filing any further complaints, grievances, or appeals concerning events that occurred prior to entry of the judgment (*id.* at 4). Both petitioner and his attorney approved the consent judgment (*ibid.*).

In February, 1982, petitioner filed this suit against the Secretary of Labor, the Administrator of the General Services Administration, the Merit Systems Protection Board, and several employees of the Department of Labor, alleging the same causes of action as in the earlier complaints (Pet. App. 4). Petitioner subsequently amended his complaint to include an allegation that respondents had violated the Freedom of Information Act. Petitioner maintained that the consent judgment should not have res judicata effect because he had agreed to the judgment under duress (*id.* at 2). Specifically, petitioner alleged that "[respondents] used fraudulent means to endeavor to remove petitioner from federal service, resulting in the demotion and involuntary transfer" and that these fraudulent acts " 'had a material effect on [petitioner's] consenting to execute the [consent judgment]' " (Pet. 7; see also Pet. 45-47).

The district court granted respondent's motion for summary judgment (Pet. App. 16-17). The court ruled that petitioner had not met the one year time limit for reopening a judgment pursuant to Federal Rule of Civil Procedure 60(b)(3). In addition, the court ruled that, in any event, petitioner had "failed * * * to set out any valid contention regarding 'fraud, misrepresentation or other misconduct' "

that would justify relief under that subsection or under Rule 60(b)(6) (Pet. App. 15).[1]

The court of appeals affirmed the district court's judgment (Pet. App. 1-13), concluding that the district court had not abused its discretion in failing to grant post-judgment relief. The court held, first, that petitioner had "failed to satisfy the one year time limitation announced in Rule 60(b)(3)" (*id.* at 7). Second, the court held that petitioner had not alleged any changed circumstances that would render prospective application of the consent judgment inequitable under Rule 60(b)(5) (Pet. App. 8-9). The court stated that "the duress of which [petitioner] complains is essentially nothing other than the various acts that formed the basis of his original lawsuits" (*id.* at 9). Third, the court held that petitioner had presented neither extraordinary circumstances justifying application of Rule 60(b)(6) nor an "adequate explanation of his nearly two year delay in seeking relief" (Pet. App. 10). Moreover, the court found that relief under Rule 60(b)(6) was also unavailable because petitioner's allegations of fraud fell within the provisions of Rule 60(b)(3) and "subsection (6) is not available to a party where relief would have been available under subsections (1) through (5) if the party had sought that relief within the

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[1]Rule 60(b) provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; * * * (5) * * * it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reason[] (3) not more than one year after the judgment, order, or proceeding was entered or taken. * * * This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment * * *.

proper time limits" (Pet. App. 9-10). Finally, the court held that petitioner's allegation of fraud did not "remotely approach[]" the type of "egregious misconduct" that constitutes a fraud on the court, entitling a party to bring an independent cause of action to set aside a judgment under Rule 60(b) (Pet. App. 11-12).

2. The court of appeals correctly found that the district court did not abuse its discretion in dismissing petitioner's complaint.[2] The court's decision, which applies well-settled legal principles regarding relief under Rule 60(b) to the facts alleged by petitioner, plainly does not warrant review by this Court.

Petitioner principally argues (Pet. 15-30) that the courts below, ruling on a motion for summary judgment, improperly placed upon him the burden of proving his entitlement to relief under Rule 60(b). This claim is without merit. Summary judgment is appropriate if "there is no genuine issue as to any material fact and * * * the moving party is entitled to a judgment as a matter of law" (Fed. R. Civ. P. 56(c)). Although all facts and the inferences to be drawn from them "must be viewed in the light most favorable to the party opposing the motion," *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962), "where the facts as asserted by [that party] are such that, if established, there could be no recovery * * * then the question becomes one of law for determination of the court and a proper matter for

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[2]Application of the abuse of discretion standard was proper. See, *e.g.*, *Farmers Co-op. Elevator Ass'n* v. *Strand*, 382 F.2d 224, 232 (8th Cir.), cert. denied, 389 U.S. 1014 (1967) (trial court's denial of motion for relief from judgment would be set aside only upon a clear showing of abuse of discretion). Accord, *e.g.*, *United States* v. *Williams*, 674 F.2d 310, 312 (4th Cir. 1982); *Bank of Montreal* v. *Olafsson*, 648 F.2d 1078, 1079 (6th Cir.), cert. denied, 454 U.S. 1084 (1981); *Amoco Overseas Oil Co.* v. *Compagnie Nationale Algerienne*, 605 F.2d 648, 656 (2d Cir. 1979).

disposition by summary judgment," *Greyhound Corp.* v. *Excess Insurance Co.*, 233 F.2d 630, 636 (5th Cir. 1956). The court of appeals showed that, under this standard, petitioner is not entitled to relief under any of the provisions of Rule 60(b).

The court found that petitioner's claim that he was subjected to fraudulent acts at the time of his demotion, even if true, did not present "extraordinary circumstances" justifying relief under Rule 60(b)(6). See, *e.g.*, *Ackermann* v. *United States*, 340 U.S. 193, 199 (1950); *Klapprott* v. *United States*, 335 U.S. 601, 614-615 (1949). A party may not obtain relief under Rule 60(b)(6) merely to reconsider a free, calculated, deliberate choice not to appeal. *Ackermann*, 340 U.S. at 198.[3] Rather, a party must show "compelling or aggravated circumstances involving extreme hardship and injustice." *McDonald* v. *Oliver*, 642 F.2d 169, 172 (5th Cir. 1981). Thus, the court of appeals correctly found that petitioner's allegations — which are "in substance part of those that the consent judgment purported to settle and dispose of" (Pet. App. 13) — did not present "such unusual, exceptional, and egregious circumstances as would justify upsetting the terms of the consent judgment to which he agreed" (*ibid.*).

Contrary to petitioner's allegations (Pet. 9-12), the court of appeals accurately characterized his complaint as falling within Rule 60(b)(3) and thus properly found that his failure to meet the one year time limit imposed in that subsection deprived him of relief under Rule 60(b)(6). The court of appeals, in agreement with the district court, properly determined that the fraud alleged by petitioner — which he

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[3]Thus, Rule 60(b)(6) relief would appear to be particularly inappropriate where the prior action terminated by consent judgment. See, *e.g.*, *Cooper Agency* v. *United States*, 327 F. Supp. 948, 954 (D.S.C. 1971) (court will "carefully scrutinize" attempt to reopen settlement).

claims precipitated both his demotion and his willingness to enter into the consent judgment (Pet. 7) — is the type of misconduct contemplated by Rule 60(b)(3). See C. Wright and A. Miller, *Federal Practice and Procedure* § 2860, at 188 (1973). Petitioner does not dispute that his claim for relief is time-barred if the court correctly found that the fraud alleged was cognizable under Rule 60(b)(3). See, *e.g.*, *Klapprott*, 335 U.S. at 613; *Gulf Coast Building & Supply Co.* v. *International Brotherhood of Electrical Workers*, 460 F.2d 105, 108 (5th Cir. 1972); *Lubben* v. *Selective Service System*, 453 F.2d 645, 651 (1st Cir. 1972). In any case, as shown above, the court in fact considered the merits of petitioner's entitlement to relief under Rule 60(b)(6) (Pet. App. 10) and correctly concluded that no such relief was warranted.

The court of appeals also properly found that petitioner had not alleged any changed circumstances justifying relief under Rule 60(b)(5), see, *e.g.*, *System Federation No. 91* v. *Wright*, 364 U.S. 642, 647-648 (1961), nor demonstrated any misconduct that could constitute a fraud upon the court entitling him to institute an independent cause of action, see, *e.g.*, *Rozier* v. *Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978).[4]

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[4]In his sixth Question Presented, petitioner complains that the district court improperly granted summary judgment on his Freedom of Information Act (FOIA) request. Petitioner mentions this issue briefly in his statement of facts (Pet. 13-15), but does not discuss it further except in relation to his Rule 60(b) contentions (Pet. 19-21) and in complaining that the court of appeals did not specifically address the issue (*id.* at 29-30). In dismissing petitioner's complaint, the district court apparently found that this FOIA request was also barred by the consent judgment. If petitioner believed that the district court improperly failed to rule on this aspect of his case, he should have sought clarification from the district court within the appropriate time limits. In any event, petitioner does not suggest any reason why this Court should grant certiorari to consider any issue raised by the denial of his FOIA request.

It is therefore respectfully submitted that the petition for a writ for certiorari should be denied.

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